IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

MISCELLANEOUS APPLICATION NO.4994 OF 2004

Mr.Vinod K.Sharda ...Applicant

Versus

M/s.Birla Global Finance Ltd. & Anr....Respondents

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Mr.M.B.Shirsat with Rajendra Prasad Ojha for Applicant.

Mr.Sanjay Parab for Respondent No.1.

Mr.K.V.Saste, A.P.P. for Respondent No.2.

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CORAM: A.M.KHANWILKAR, J.

DECEMBER 21, 2004.

P.C.

1. Heard Counsel for the parties.

2. Rule. Rule made returnable forthwith, by consent. Mr.Parab waives notice for Respondent No.1. Mr.Saste, A.P.P. waives notice for Respondent No.2.

3. As short question is involved, the matter is taken up for final disposal forthwith, by consent.

4. The short question that arises for consideration in the present Application is: whether the complaint as filed by the Respondent No.1 makes out any offence, so far as Applicant before this Court i.e. accused No.5 is concerned?

5. The only allegation in the complaint, so as to name the Applicant as accused No.5 is that he is the Director of the accused Company, who is jointly and severally responsible for the financial and administrative decisions and day-to-day affairs of the Company. The Applicant is not signatory to the cheque. There is no other assertion, much less, material facts spelt out in the complaint so as to indicate the complicity of the Applicant to make him liable for the offence committed by the Company, as is required by the mandate of Section 141 of the Negotiable Instruments Act. Recently, I had occasion to examine this aspect **in Criminal**

Writ Petition No.2241 of 2004 - Madanlal Taparia & Anr. vs. The Bank of Rajasthan Ltd. & Anr. decided on 14th December 2004. For the view taken therein, the criminal action in the present case cannot be allowed to proceed, as there is no allegation to indicate complicity of the Applicant, as is required by Section 141 of the Act.

6. Accordingly the Application succeeds and is allowed in terms of prayer clause (a), only insofar as Applicant/accused No.5 is concerned.

A.M.KHANWILKAR, J.